

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

AQUA ILLINOIS, INC.)	
)	
Petition for a Certificate of Public Convenience)	
and Necessity to Construct, Operate and Maintain)	Docket No. 13-0246
a Water Distribution System and a Wastewater)	
Collection System in areas of Kankakee and Will)	
Counties, Illinois.)	

**AQUA ILLINOIS, INC.’S
MOTION TO STRIKE THE REPLY BRIEF AND SUGGESTED ORDER
OF THE VILLAGE OF PEOTONE AND THE VILLAGE OF MONEE**

I. INTRODUCTION

On March 20, 2014, intervenors the Villages of Peotone and Monee (the Villages) jointly filed a reply brief that is, on its face, wanting on record support and completely devoid of legal support. These defects alone give the Commission grounds to disregard the brief.

There are other problems with the Villages’ reply brief. It is replete with irrelevant and scurrilous remarks that have no place in the record of this proceeding. And the entire final section of the brief offers new proposals not included in the testimony of any witness and to which Aqua has not had an opportunity to respond. Inflammatory material and after eleventh-hour proposals are improper and impermissible; the Commission’s Rules simply do not condone them. For these reasons, the Commission should strike the Villages’ reply brief and thereby preserve the integrity of this Commission proceeding and the record of this docket.

On March 28, 2014—four days after the Administrative Law Judge’s (ALJ) deadline for doing so—the Villages also filed, without leave, a suggested order. That the suggested order is untimely is not its only defect. It also suffers from the same improprieties as the Villages’ reply brief: it is replete with material not supported by, even contradictory to, the record evidence and material that is irrelevant and inflammatory. That material has no place in the record of this

proceeding. Accordingly, and as explained more fully below, the Commission also should strike the Villages' suggested order.

II. ARGUMENT

A. **The Villages' reply brief and suggested order are replete with irrelevant, inflammatory remarks that have no place in Commission proceedings or the record of this case.**

The Commission's Rules authorize it to strike from the record "irrelevant, immaterial, scurrilous or unethical matter." 83 Ill. Adm. Code 200.190(a); *see also* 83 Ill. Adm. Code 200.610(a) ("In all proceedings subject to this Part [200], irrelevant, immaterial or unduly repetitious evidence shall be excluded."); 83 Ill. Adm. Code 200.680 (authorizing the ALJ to exclude "irrelevant, immaterial, unduly repetitious or otherwise inadmissible evidence"). Irrelevant material has no place in the record of Commission proceedings. Ill. R. Evid. 402 ("Evidence which is not relevant is not admissible.") Nor does inflammatory material. *See, e.g., Chamberlain v. Commonwealth Edison Co.*, Docket 03-0463, Tr. 8 (Sept. 17, 2003) (the ALJ *sua sponte* striking all references to a "matter . . . discussed in a scurrilous manner.").

The Villages' reply brief is fraught with irrelevant, scurrilous attacks at Aqua and its purported motive in requesting the Water Certificate in this case, and their suggested order is no different. Section B of the Villages' argument in brief is especially offending. (*See* Vill. Reply Br. 4-7.) There, the Villages allege without any record support (because there is none):

- That Aqua is requesting the Water Certificate, "not simply to improve University Park water quality but rather to 'position' itself to be the provider of water services should population growth occur in the proposed expanded area at odds with the Intervenor's planning areas. This is a business strategy directed toward the future of Aqua, not the future of University Park." (*Id.* at 5; *see also* Vill. Sugg. Order 9.)
- That Aqua's position on the least-cost nature of its proposed main is to "simply say[], 'see, our preferred plan is cheaper,' and leave[] it at that." (Vill. Reply Br. 5-6.)
- That "[t]he important thing here is that the pipeline is Aqua's preferred plan. The

pipeline is what it wants as a profit-seeking corporation, as it will give it to untapped water markets, areas that clearly have no need for service at this time, but areas in which Aqua's corporate plan sees room to grow future revenues." (*Id.* at 6; *see also* Vill. Sugg. Order 11, 12.)

- That "Aqua attempts to shield the Commission from the true cost of its preferred plan." (Vill. Reply Br. 6.)
- That the Commission should "[l]ook[] at this matter independent of Aqua's corporate goals." (*Id.*; *see also* Vill. Sugg. Order 11 (asserting, "Aqua concluded that this option was not as desirable to its business operations as the proposed Main").)
- That Aqua's least-cost analyses are "corporate agenda motivated cost estimates." (Vill. Reply Br. at 7.)

Every one of the Villages' accusations has no bearing on the issues in this case. And not one is or can be supported by the record. The Commission cannot base its orders on unfounded accusations. So, the insulting remarks serve no purpose other than to inflame the Commission and the public against Aqua. Thus, they have no place in the record of this proceeding.

The Commission should not condone such scurrilous attacks on parties to the proceedings before it and, indeed, on the integrity of those proceedings. It should strike the Villages' reply brief and suggested order, and thereby remove this offensive material from the record.

B. The Villages' reply brief improperly raises new issues to which no party has an opportunity to respond.

Due process in administrative proceedings requires "the opportunity to be heard" and "the right to cross-examine adverse witnesses." *Gigger v. Bd. of Fire & Police Comm'rs of City of East St. Louis*, 23 Ill. App. 2d 433, 439 (4th Dist. 1959); *see also Abrahamson v. Ill. Dep't of Prof'l Reg.*, 153 Ill. 2d 76, 95 (1992); *Balmoral Racing Club, Inc. v. Ill. Racing Bd.*, 151 Ill. 2d 367, 400-01 (1992). Accordingly, the Commission will not consider proposals offered for the first time in post-hearing brief, after the evidence has closed and the time for responsive evidence has expired. *See, e.g., Ill. Comm. Comm'n v. Ill. Gas Co.*, Docket 02-0170, Order, 2003 Ill. PUC

LEXIS 682, *35-36 (Aug. 6, 2003) (no consideration given to expert qualifications submitted for the first time in reply brief on exceptions); *Commonwealth Edison Co.*, Docket 92-0121, Order, 1995 Ill. PUC LEXIS 232, *25-26 (Apr. 12, 1995) (no consideration given to proposal offered after evidentiary hearing concluded); *Ill. Comm. Comm'n*, Docket 94-0066, Order, 1995 Ill. PUC LEXIS 176, *266-68 (Feb. 23, 1995) (no consideration given to Staff proposal offered for the first time in brief, to which no party had the opportunity to respond for the record, and which would violate fundamental fairness and abridge other parties' due process).¹

The final section of the Villages' reply brief—Section C, “Limitations should be placed on any certificate granted by the Commission”—consists wholly of new proposals not offered in the testimony of any witness. (Vill. Reply Br. 7-8.) Here, the Villages argue, for the first time, that the Commission should place “certain limitations” on the Water Certificate. (*Id.* at 7.) Specifically, they propose that the Commission restrict where the main will go within the Water Certificate area and prohibit Aqua from serving customers in that area from the main. (*Id.*)

The Villages have not, and cannot, provide record support for their after eleventh-hour proposals. And by making the proposals for the first time in brief—over a month and a half after the evidentiary hearing and *nearly three months* after the January 3, 2014 deadline for intervenor rebuttal testimony—they have deprived Aqua of the opportunity to examine and rebut with evidence the new positions. As such, the new proposals (Section C of the Villages' reply brief) are legally improper.² The Commission should strike them from the record.

¹ Likewise, the Commission's Rules restrict the scope of reply briefs to arguments “responsive to any argument raised in any other party's or the Staff's opening brief.” 83 Ill. Adm. Code 200.800(c).

² The Villages' new proposals are nonsensical, in any event. They ask the Commission to prohibit Aqua from locating the main “within the territory covered by boundary agreements entered into by Peotone and Monee.” But the Villages' boundary areas are expansive; they cover many square miles of Will County over which both Villages concede they have no jurisdiction. (Aqua Exs. 3.4, p. 6 (data request AQUA-VOP 3.17; 3.5, p. 4 (data request AQUA-VOM 2.24).) This restriction would preclude Aqua from constructing the main *at all*. It would moot the

C. The Villages' reply brief and suggested order omit, mischaracterize, and contradict the record evidence.

The Commission's Rules require parties to support statements of fact in brief with citations to the record. 83 Ill. Adm. Code 200.800(a). The purpose is clear: the Commission must base its findings on record evidence, 220 ILCS 5/10-103; 5 ILCS 100/10-35(c), and the arguments of counsel in brief are not evidence. *Johnson v. Lynch*, 66 Ill. 2d 242, 246 (1977). The Rule thus ensures that briefs before the Commission rely only on facts that have been admitted into evidence and subjected to the adversarial process. *See, e.g. Ill. Comm. Comm'n v. Ill. Gas Co.*, Docket 02-0170, Order, 14 (Aug. 6, 2003); *Commonwealth Edison Co.*, Docket 92-0121, Order, 1995 Ill. PUC LEXIS 232, *25-26 (April 12, 1995). When a party fails to support its arguments in brief with record citations, it not only violates the Commission's Rules, but also waives the unsupported arguments. *See People v. Johnson*, 192 Ill. 2d 202, 206 (2000) (holding the "failure to include record citations when the argument requires an examination of the record results in waiver of the issue").

A cursory review of the Village's reply brief "argument" reveals a noticeable absence of citations to the record. (Vill. Reply Br. 2-8.) To the extent the Villages fail to rely on the record to support their arguments, they have waived them. *Johnson*, 192 Ill. 2d at 206. For this reason alone, the Commission can disregard their reply brief.

The Villages' failure to include record support for their arguments in brief makes it nearly impossible to verify the accuracy of their claims against what the record evidence actually says. Still, the record plainly does not support some of those allegations, many of which the

Water Certificate and the purpose of this proceeding—to bring better water to University Park. The Villages also ask the Commission to prohibit Aqua from providing service from the main. This would violate the Public Utilities Act and Aqua's duty under the Act to "upon reasonable notice, furnish to all persons who may apply therefor and be reasonably entitled thereto, suitable facilities and service, without discrimination and without delay." 220 ILCS 5/8-101.

Villages repeat in their suggested order. For example:

- The Villages thrice claim that it will cost \$26 million to “loop” the main that Aqua proposes to construct to transmit softened, filtered water to University Park. (Vill. Reply Br. 6, 7; Vill. Sugg. Order 11, 12.) That cost estimate is nowhere in the record.
- The Villages contend that “improved water treatment, better management, and/or replacement of old pipes, all . . . are much less costly than the proposals put forth by Aqua” (Vill. Reply Br. 5; Vill. Sugg. Order 11.)³ There is no evidence of “better management” or its cost or the cost to “replace[] of old pipes” in the record, let alone evidence that they are “much less costly” than the main. And the cost estimate that *is* in the record for “improved water treatment” in University Park—\$21.4 million, at least—is much *more* costly than the cost estimate for the main—\$13 million. (See, e.g., Aqua Exs. 2.0 (Blanchette Reb.), pp. 10-13; 3.0 (Blanchette Sur.), pp. 11-12; 1.4 (Water Supply Study); 2.3 (Hydraulic Water Model Analysis Report); 2.4 (Water Treatment Study); ICC Staff Ex. 4.0 (Atwood Reb.), pp. 10-11.)
- Again, the Villages allude, several times, to Aqua’s supposed “business strategy,” “corporate plan,” and “corporate agenda” in seeking to bring better water to University Park (Vill. Reply Br. 5, 6, 7), and they claim that the main is Aqua’s “preferred plan” as “a profit-seeking corporation” because it will “‘position’ [Aqua] to be the provider of water services should population growth occur in the proposed expanded area at odds with the Intervenor’s planning areas.” (*Id.* at 6, 5; see also Vill. Sugg. Order 9, 11, 12.) There is no record evidence of any ulterior motive for the Water Certificate that Aqua requests—because there isn’t one. And again, these assertions also are inflammatory and improper. They have no place in the record of this proceeding.

Not only does the record evidence fail to support the Villages’ allegations, but also many of their allegations plainly *contradict* the record evidence:

- The Villages twice claim, “*all parties agree* [the proposed main] will need to be looped to ensure reliability and quality.” (Vill. Reply Br. 4-5, 6 (asserting “*all parties, including Aqua itself, agree* future looping the system will be necessary to add redundancy, increase reliability and ensure high quality water”) (emphasis added); Vill. Sugg. Order 11, 12.) That is exactly *opposite* what the evidence shows. (See, e.g., Aqua Exs. 1.0 (Blanchette Dir.), p. 14; 2.0, p. 40, 3.0, p. 15 (explaining that looping the main may be a future consideration, *but it is not necessary to the proper operation of the main*).) And no Staff engineering witness addressed “looping” the main in testimony, let alone agreed that looping necessary. (See generally ICC Staff Exs. 1.0 (Atwood Dir.); 4.0.)

³ Notably, the Villages concede, “Aqua has consistently demonstrated that its water and wastewater systems in Illinois are well operated, efficiently managed and supervised, [and] that its equipment is well maintained.” (Vill. Sugg. Order 6.)

- The Villages also assert, “the evidence demonstrates Aqua essentially discarded this option [acquiring a Lake Michigan water supply] all together, never fully exploring the potential but rather deferring to the pipeline or treatment as the only viable options.” (Vill. Reply Br. 5; Vill. Sugg. Order 11.) They again claim that “Aqua has not explored the possibility of expanded Lake Michigan water allocations from . . . neighboring towns at all.” (Vill. Reply Br. 5; *see also* Vill. Sugg. Order 11 (claiming “Aqua concluded that this option was not as desirable to its business operations as the proposed Main.”).) Again, that is patently false. The evidence shows that Aqua fully explored acquiring a Lake Michigan water supply from several neighboring municipalities. (Aqua Exs. 1.0, pp. 11-12; 2.0, pp. 12-13, 37, 47; 1.4 (Water Supply Study); ICC Staff Ex. 1.0, p. 20.)
- The Villages claim “Aqua’s own projections show the current 22 million gallon per day capacity of its Kankakee River treatment facilities will not meet its anticipated necessary capacity of upwards of 30 million gallons per day in the University Park area, thereby requiring additional expenses above and beyond the \$26 million water mains to increase the capacity of its Kankakee River treatment facilities.” (Vill. Reply Br. 6.) That too contradicts the record evidence. The record evidence makes plain that that Aqua can combine the proposed main with its existing facilities and adequately serve current daily demand in University Park—and demand through at least 2040—without adding incremental pumping capabilities to its existing system. (*See, e.g.*, Aqua Exs. 2.0, pp. 11-12; 3.0, pp. 5-11; 2.3 (Hydraulic Water Model Analysis Report); ICC Staff Ex. 4.0, pp. 9, 11.)
- The Villages, in their suggested order, ask the Commission to find that “the Record contains no evidence of a need for water service outside of that current service area.” (Vill. Sugg. Order 10; *see also* Vill. Reply Br. 3.) But, again, that is patently false. The record shows that “Certification of the Revised Water Area and construction of the Main also would allow Aqua to meet service demands resulting from anticipated growth in . . . the Revised Water Area surrounding the Main.” (Aqua Ex. 2.0, p. 8; *see also* Aqua Ex. 1.0, p. 9 (explaining anticipated population growth in Will County).)

Even in the few instances where the Villages do cite to the record evidence in brief, they mischaracterize it. For example, they represent that “Staff Witness Atwood specifically testified that Aqua has not demonstrated a need for a Certificate for the Water Area. . . . This concern was not alleviated by Aqua’s subsequent testimony.” (Vill. Reply Br. 2-3 (citing ICC Staff Exs. 2.0 and 4.0).) But, in the rebuttal testimony they cite, Staff witness Mr. Atwood testified that he has “*no objection*” to the Water Certificate area based on the need for the proposed main. (ICC

Staff Ex. 4.0, p. 3 (emphasis added).)⁴

The Villages' either are unaware of, or choose to ignore, the record evidence in making arguments in brief (and in reiterating those arguments in their suggested order). So, their unsupported arguments are waived. The Commission should strike those arguments from the record or, at the least, discard them. It likewise should strike the same unsupported and contradictory allegations in the Villages' suggested order.

D. The Villages' reply brief lacks any legal support.

Illinois Supreme Court Rule 341 requires that arguments in brief shall include citation to the authorities and the record relied on. Ill. Sup. Ct., R. 341(h)(7). "Lack of citation to legal authority in briefs . . . constitutes a failure to comply with Supreme Court Rule 341(h)(7) and results in waiver" of the party's arguments. *Suriano v. LaFeber*, 324 Ill. App. 3d 839, 851 (1st Dist. 2001). This principle applies in Commission proceedings. *See, e.g., Citizens Util. Bd., Compl. Requesting the ICC Order Peoples Energy Servs. to Cease and Desist Misleading Mkt'g of Gas Offering*, Docket 03-0592, Order, 29 (July 21, 2004) (finding party waived its right to assert, and refusing to consider, argument not support by citation to legal authority) (citing *Statler v. Catalano*, 167 Ill. App. 3d 397, 410-11 (5th Dist. 1988)).

Again, even a cursory review of the Villages' reply brief reveals that the Villages do not rely on any legal authority to support their arguments. This is another reason the Commission can disregard their brief. *See Citizens Util. Bd.*, Docket 03-0592, Order at 29.

⁴ The Villages' initial brief makes the same mischaracterization of Staff's evidence. (Villages Init. Br. 13.) Importantly, Staff expressly disavowed that mischaracterization on reply: "Intervenors mischaracterize Staff's position on the matter, and are incorrect in asserting that 'Mr. Atwood's opinions regarding Aqua's failure to demonstrate a need for the service in the area are still present.' . . . Messrs. Blanchette and Atwood . . . concur[] that there is a need for Aqua to serve the Revised Water Area." (Staff Reply Br. 2; *see also id.* at 4 ("[T]he smaller revised Water Area satisfactorily addressed Staff's concerns and Staff does not object to the revised Water Area.")).

E. The Commission should strike the offending portions of the Villages’ reply brief.

The legal principles above require that the portions of the Villages’ reply brief identified below be stricken from the record:

No.	Objectionable Material in the Villages’ Reply Brief	Citation	Reason for Objection
1	“Staff Witness Atwood specifically testified that Aqua has not demonstrated a need for a Certificate for the Water Area. . . . This concern was not alleviated by Aqua’s subsequent testimony.”	Vill. Reply Br. 2-3	Contradicts the record evidence. <i>See</i> ICC Staff. Ex. 4.0, p. 3. <i>See also</i> Staff Init. Br. 9; Staff Reply Br. 2, 4.
2	“all parties agree [the main] will need to be looped to ensure reliability and quality”	Vill. Reply Br. 4-5	Contradicts the record evidence. <i>See, e.g.</i> , Aqua Exs. 1.0, p. 14; 2.0, p. 40; 3.0, p. 15. <i>See generally</i> ICC Staff Exs. 1.0; 4.0.
3	“improved water treatment, better management, and/or replacement of old pipes, all of which are much less costly than the proposals put forth by Aqua”	Vill. Reply Br. 5	No record evidence; contradicts the record evidence. <i>See, e.g.</i> , Aqua Ex. 2.0, pp. 46-47.
4	“This fact alone at the very least demonstrates Aqua’s failure to adequately investigate all potential solutions to the alleged problem. It further demonstrates Aqua’s intent not simply to improve University Park water quality, but rather to ‘position’ itself to be the provider of water services should population growth occur in the proposed expanded area at odds with the Intervenor’s planning areas. This is a business strategy directed toward the future of Aqua, not the future of University Park.”	Vill. Reply Br. 5	Contradicts the record evidence. <i>See, e.g.</i> , Aqua Ex. 2.0, pp. 46-47. Also no record evidence; irrelevant; scurrilous.
5	“However, the evidence demonstrates Aqua essentially discarded this option all together, never fully exploring the potential but rather deferring to the pipeline or treatment as the only viable options.”	Vill. Reply Br. 5	Contradicts the record evidence. <i>See, e.g.</i> , Aqua Exs. 1.0, pp. 11-12; 2.0, pp. 12-13, 37, 47; 1.4; ICC Staff Ex. 1.0, p. 20.

No.	Objectionable Material in the Villages' Reply Brief	Citation	Reason for Objection
6	"Pointedly, Aqua has not explored the possibility of connecting to towns neighboring University Park, ostensibly because their Lake Michigan allocation is not sufficient. However, Aqua has not explored the possibility of expanded Lake Michigan water allocations from those neighboring towns at all."	Vill. Reply Br. 5	Contradicts the record evidence. <i>See, e.g.</i> , Aqua Exs. 1.0, pp. 11-12; 2.0, pp. 12-13, 37, 47; 1.4; ICC Staff Ex. 1.0, p. 20.
7	"Aqua then simply says, 'see, our preferred plan is cheaper,' and leaves it at that."	Vill. Reply Br. 5-6	No record evidence; scurrilous.
8	"The important thing here is that the pipeline is Aqua's preferred plan. The pipeline is what it wants as a profit-seeking corporation, as it will give it to untapped water markets, areas that clearly have no need for service at this time, but areas in which Aqua's corporate plan sees room to grow future revenues. Therefore, Aqua attempts to shield the Commission from the true cost of its preferred plan."	Vill. Reply Br. 6	No record evidence; irrelevant; scurrilous.
9	"However, all parties, including Aqua itself, agree future looping the system will be necessary to add redundancy, increase reliability and ensure high quality water."	Vill. Reply Br. 6	Contradicts the record evidence. <i>See, e.g.</i> , Aqua Exs. 1.0, p. 14; 2.0, p. 40; 3.0, p. 15. <i>See generally</i> ICC Staff Exs. 1.0; 4.0.
10	"[T]he cost of this looping, which would likely double the estimate to at least \$26 million."	Vill. Reply Br. 6	No record evidence.
11	"Moreover, Aqua's own projections show the current 22 million gallon per day capacity of its Kankakee River treatment facilities will not meet its anticipated necessary capacity of upwards of 30 million gallons per day in the University Park area, thereby requiring additional expenses above and beyond the \$26 million water mains to increase the capacity of its Kankakee River treatment facilities."	Vill. Reply Br. 6	Contradicts the record evidence. <i>See, e.g.</i> , Aqua Exs. 2.0, pp. 11-12; 3.0, pp. 5-11; 2.3; ICC Staff Ex. 4.0, pp. 9, 11.
12	"Aqua's corporate goals"	Vill. Reply Br. 6	No record evidence; irrelevant; scurrilous.
13	"Even under Aqua's corporate agenda motivated cost estimates, is an over \$26 million looped water main system the least cost option when compared to a \$21 million treatment facility?"	Vill. Reply Br. 7	No record evidence; irrelevant; scurrilous.

No.	Objectionable Material in the Villages' Reply Brief	Citation	Reason for Objection
14	Section C (entirely)	Vill. Reply Br. 7	No record evidence; new proposals offered for the first time in brief.

Striking these portions of the Villages' reply brief, however, leaves little substance left to the brief. As such, for completeness, the Commission simply should strike the offending reply brief in its entirety. In this way, the Commission can preserve the integrity of this proceeding and the record.

F. The Commission also should strike the Villages' suggested order because it is untimely and suffers from the same improprieties as the Villages' reply brief.

One of the Commission's guiding goals in administering proceedings is "expedition." 83 Ill. Adm. Code 200.25(c). Another is "fairness." 83 Ill. Adm. Code 200.25(b) ("[P]arties which do not act diligently and in good faith shall be treated in such a manner as to negate any disadvantage or prejudice experienced by other parties."). Accordingly, ALJs have discretion to establish case schedules, including the time for filing briefs and other post-hearing submissions. *See* 83 Ill. Adm. Code 200.500, 200.600, 200.810. Case schedules foster orderly and equitable proceedings. And filings made in contravention of established case schedules should be stricken. *See, e.g. Commonwealth Edison Co.*, Notice of ALJ Ruling, Docket 12-0298 (June 1, 2012) (striking filed "comments" not provided for by the established case schedule); *Preston Utils. Corp.*, Order, Docket 80-0271, 1981 Ill. PUC LEXIS 46, *3 (Feb. 19, 1981) (granting motion to strike untimely filing).

At the February 6, 2014 evidentiary hearing, the ALJ established a schedule for filing post-hearing briefs and suggested conclusions. He ordered suggested conclusions to be filed on the reply brief date of March 20 or within "an additional day or two" thereafter. (Tr. 85-86.)

The ALJ further clarified that he would give the parties “up to two days” past March 20 to file suggested conclusions. (*Id.*) As such, the deadline for suggested conclusions was March 24, two business days after the March 20 reply brief deadline. *See* 5 ILCS 70/1.11.

The Villages filed their suggested order on March 28, 2014—four days after the deadline for that filing. (Vill. Sugg. Order (filed Mar. 28, 2014).) They did not seek leave from the ALJ to file late, nor otherwise explain the untimeliness of their filing. Thus, it would be neither fair nor expeditious to allow the filing. For that reason alone, the Commission should strike the Villages’ untimely suggested order from the record.⁵

The Commission also should strike the following objectionable material in the Villages’ suggested order from the record for the reasons explained above:

No.	Objectionable Material in the Villages’ Suggested Order	Citation	Reason for Objection
1	“the Record contains no demonstrated need for water service within the requested area for the Water Certificate”	Vill. Sugg. Order 3	Contradicts the record evidence. <i>See, e.g.</i> , Aqua Exs. 2.0, p. 8; 1.0, p. 9.
2	“Aqua’s Position” (entire section)	Vill. Sugg. Order 8	Generally mischaracterizes Aqua’s position.
3	“Aqua’s request indicates its desire to ‘position’ itself to be the provider of water services should population growth occur in the proposed expanded area.”	Vill. Sugg. Order 9	Contradicts the record evidence. <i>See, e.g.</i> , Aqua Ex. 2.0, pp. 46-47. Also no record evidence; irrelevant; scurrilous.

⁵ Shortly after the Villages filed their suggested order, intervenor the City of Wilmington also filed a “Proposed Order and Findings” that “adopts as though stated verbatim herein the Suggested Order of the Village of Peotone and the Village of Monee.” (Wilmington Proposed Order and Findings (filed Mar. 28, 2014).) Curiously, Wilmington assumes the Villages’ suggested order verbatim and in its entirety although the suggested order adopts positions contrary to those advocated by Wilmington in this proceeding. (*Compare, e.g.*, Vill. Sugg. Order 4-7, 17-19 (approving Limited Water and Wastewater Certificate) *with* Wilmington Init. Br. 3-4, n.2 (raising non-substantive objection to Limited Certificate) and Vill. Sugg. Order. 9 (arguing slow growth in Will County) *with* Wilmington Init. Br. 12 (arguing foreseeable growth in Will County).)

No.	Objectionable Material in the Villages' Suggested Order	Citation	Reason for Objection
4	"the Record contains no evidence of a need for water service outside of that current service area"	Vill. Sugg. Order 10	Contradicts the record evidence. <i>See, e.g.,</i> Aqua Exs. 2.0, p. 8; 1.0, p. 9.
5	"Aqua's Position" (entire section)	Vill. Sugg. Order 10-11	Generally mischaracterizes Aqua's position.
6	"Based only on a cursory review, Aqua dismissed the possibility of bringing Lake Michigan water to University Park. Aqua simply concluded any attempt to utilize Lake Michigan water would be cost prohibitive, in that it would require transmission lines through urban areas, increased allocations for neighboring towns, and pass through costs to its customers. Without much more analysis, Aqua disregarded this potential option."	Vill. Sugg. Order 11	Contradicts the record evidence. <i>See</i> Aqua Exs. 1.0, pp. 11-12; 2.0, pp. 12-13, 37, 47; 1.4; ICC Staff Ex. 1.0, p. 20.
7	"Aqua concluded that this option was not as desirable to its business operations as the proposed Main."	Vill. Sugg. Order 10-11	No record evidence; irrelevant; scurrilous.
8	"Although Aqua concedes looping this Main may be necessary in the future, and would likely double the cost, it asks the Commission to ignore those costs for purposes of the least-cost analysis, instead indicating that looping is not necessary and that it can maintain the system without the need for looping."	Vill. Sugg. Order 11	Contradicts the record evidence. <i>See, e.g.,</i> Aqua Exs. 1.0, p. 14; 2.0, p. 40; 3.0, p. 15. <i>See generally</i> ICC Staff Exs. 1.0; 4.0. Also no record support; irrelevant; scurrilous.
9	"Peotone and Monee draw their municipal water supplies from the same aquifer source as Aqua's supply for University Park, yet through measures much less costly and intrusive than a 20 mile long pipeline, have been able to satisfy their customers as to water quality. This alone indicates better management, treatment and/or replacement of old pipes could solve any concerns University Park customers currently have regarding water quality."	Vill. Sugg. Order 11	No record evidence; contradicts the record evidence. <i>See, e.g.,</i> Aqua Ex. 2.0, pp. 46-47.
10	"the Main doubles to approximately \$26 million in cost"	Vill. Sugg. Order 12	No record evidence.

No.	Objectionable Material in the Villages' Suggested Order	Citation	Reason for Objection
11	"Aqua examined two main alternatives to meet the purported need in University Park: improved treatment facilities and construction of the Main."	Vill. Sugg. Order 12	Contradicts the record evidence. <i>See, e.g.</i> , Aqua Exs. 1.4; 2.4; 2.3; ICC Staff Ex. 1.0, p. 20.
12	"the true cost of Aqua's preferred solution"	Vill. Sugg. Order 12	No record evidence; scurrilous.
13	"Aqua's own testimony indicates looping the system may be necessary to add redundancy, increase reliability and ensure high quality water."	Vill. Sugg. Order 12	Contradicts the record evidence. <i>See, e.g.</i> , Aqua Exs. 1.0, p. 14; 2.0, p. 40; 3.0, p. 15. <i>See generally</i> ICC Staff Exs. 1.0; 4.0.

As with their reply brief, striking the above portions of the Villages' suggested order would leave little substance left to their filing. As such, for completeness, the Commission simply should strike the Villages' offending suggested order in its entirety. Again, in this way, the Commission can preserve the integrity of this proceeding and of the record.

G. The Commission should expedite the briefing and ruling on this Motion.

As the ALJ knows, this proceeding is now over one year old. (*See* Aqua Ver. Pet. (filed Mar. 27, 2013).) It has been subject to multiple delays. Post-hearing briefing has concluded, and the ALJ's proposed order is pending. In the interest of administrative efficiency and fairness, *see* 83 Ill. Adm. Code 200.25(b), (c), and pursuant to Commission Rule 200.190, Aqua respectfully requests an expedited briefing schedule and ruling on this Motion. *See* 83 Ill. Adm. Code 200.190(e). Aqua recommends that the Villages be ordered to respond to this motion within one week, by April 7, 2014, and that Aqua be ordered to reply by April 10.

III. CONCLUSION

The record evidence supports Aqua's proposal and the Water Certificate it requests. The Villages are dissatisfied with that. Their dislike of the record, however, is not license to ignore it or contradict it in brief or suggested order—or worse—to interject irrelevant, and scurrilous material into it. Nor is it license to unveil brand new positions in post-hearing brief, after the evidence has closed and when there is no opportunity for a response. The Commission should not condone such disregard for its Rules and the integrity of the proceedings before it. It should strike the Villages' offending reply brief and suggested order from the record of this proceeding, and thereby preserve the integrity of that record.

Dated: March 31, 2014

Respectfully submitted,

AQUA ILLINOIS, INC.

/s/ Anne M. Zehr

One of its Attorneys

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CERTIFICATE OF SERVICE

I, Anne M. Zehr, an attorney, certify that on March 31, 2014, I caused a copy of the foregoing *Aqua Illinois, Inc. 's Motion to Strike Reply Brief and the Suggested Order of the Village of Peotone and the Village of Monee* to be served by electronic mail to the individuals on the Commission's Service List for Docket No. 13-0246.

/s/ Anne M. Zehr
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